IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.17429 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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UPENDRABHAI CHINUBHAI SHAH
THRO.P. OF A. NILAMBEN U SHAH & 1 - Petitioner(s)
Versus
AMBIKA DARSHAN KHETI SAHKARI MANDALI LTD. & 1-Respondent(s)

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Appearance :
MR TUSHAR MEHTA for Petitioner(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 1
MR HARIN P RAVAL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 07/03/2007
ORAL JUDGMENT

(1) Considering the view that the Court is inclined to adopt the petition is taken up for final hearing and disposal with the consent of the learned advocates appearing for the contesting parties. RULE. The learned advocate appearing for the respondent No.2

waives service.

(2) This petition challenges order dated 09.05.2006 made by the Gujarat State Co-operative Tribunal (the Tribunal) in Misc. Application No.175 of 2006 whereunder the application seeking condonation of delay has been accepted by the Tribunal.

(3) The petitioners filed a Lavad Suit No.1762 of 2004 before the Board of Nominees at Ahmedabad wherein respondent No.1-Society was the only respondent. Respondent No.2 herein moved an application Exh.24 seeking to be impleaded as a party respondent. The said application came to be rejected by the Board of Nominees on 29.04.2005. On 05.04.2006 respondent No.2 moved a revision application before the Tribunal accompanied by an application seeking condonation of delay of about 8 months and 6 days in preferring the revision application. The petitioners opposed the application for condonation of delay. Vide impugned order the Tribunal has allowed the application.

(4) The grievance on behalf of the petitioners is that the

petitioners had pointed out in their reply and the documents annexed with the reply that respondent No.2 was aware of the order dated 29.04.2005 made by the Board of Nominees but consciously took a decision not to challenge the same within the period of limitation. For this purpose the petitioners placed before the Tribunal certain documents showing collateral proceedings by way of revision before the State Government to contend that the respondent No.2 had specifically referred to order dated 29.04.2005 in the said revision application which was filed prior to the point of time when the revision application came to be filed before the Tribunal. That the said documents and the submissions based on the said documents have not been considered by the Tribunal while passing the impugned order.

(5) As against that the learned advocate appearing on behalf of respondent No.2 submitted that the impugned order of the Tribunal reflected application of mind when the order was read as a whole. That in fact respondent No.2 had explained before the

Tribunal in relation to the documents on which reliance was placed on behalf of the petitioners before the Tribunal and, therefore, there was no error committed by the Tribunal in making of the impugned order. That whether delay should be condoned or not was an issue which had to be decided by the Tribunal on consideration of all relevant aspects, including the fact as to whether respondent No.2 was a proper and necessary party in the pending lavad suit filed by the petitioners; that the Tribunal had taken the said fact into consideration and the petitioners cannot have any grievance once the Tribunal had exercised discretion vested in it to condone the delay in preferring the revision application.

(6) In light of the view that the Court is inclined to adopt, it is not necessary to record any finding in relation to respective contentions on merits of the controversy, namely, whether delay should be condoned or not. However, for the reasons that follow hereinafter, the impugned order of the Tribunal cannot be sustained.

(7) As can be seen from the impugned order the first

paragraph records facts and contentions of the applicant before the Tribunal i.e. respondent No.2 herein. The second paragraph records the submissions made on behalf of the petitioner-opponents before the Tribunal. The next three paragraphs refer to different decisions and the principles enunciated in the said decisions. The only paragraph, namely, last paragraph before the operative order, records the facts once again and then states that the applicant- respondent No.2 has an interest in the property under dispute. That the ownership of the property in dispute can be only decided after evidence is led on record. In the circumstances, it was necessary to join the third party in the pending proceedings. The only observation in relation to condonation of delay is the statement of legal principle to the effect that even if there are no sufficient reasons in the interest of justice a person should be heard and only on technical ground of delay there should not be injustice caused to any one. There cannot be dispute with the legal proposition.

(8) However, even after one reads the impugned order

made by the Tribunal in entirety it is not possible to locate one single reason which has weighed with the Tribunal for condoning the delay in preferring the Revision Application. The position in law is well settled. The Tribunal, in discharge of its quasi-judicial function, is required to pass an order which contains reasons i.e. the reasons which are relevant or germane to the issue brought before the Tribunal. In the first instance, after narration of facts and the respective submissions of the parties before the Tribunal, it is expected of the Tribunal that the Tribunal assigns reasons which reflect application of mind. In other words, the reasons assigned in the order must reflect as to whether the Tribunal while passing the order was aware of the controversy before it, the pros and cons of the respective stands and the reasons in support of the conclusion that the Tribunal records at the end of the order. Unfortunately, the impugned order is bereft of this basic legal requirement. Reasons, howsoever brief, form the backbone of judicial order. In absence of any reasons in the impugned order the same cannot be upheld.

(9) In the circumstances, the impugned order dated 09.05.2006 made by the Tribunal in Misc. Application No.175 of 2006 is hereby quashed and set aside and Misc. Appplication No.175 of 2006 restored to the file of the Tribunal. The Tribunal shall pass a fresh reasoned order in accordance with law after hearing both the sides. Needless to state that it is always open to the Tribunal to record any decision that the Tribunal may want to record in the facts and circumstances of the case but the decision has to be in consonance with the settled legal position.

(10) The petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*